

Pedro J. Nieves Miranda, Chairman
Environmental Quality Board
Commonwealth of Puerto Rico
P.O. Box 11488
San Juan, PR 00910

Re: Proposed Revisions to Puerto Rico Solid Waste Regulations; Proposed Amendments to the Regulation for the Control of Hazardous Solid Wastes; and Application for Section 404(a) of the Toxic Substances Control Act Renovation, Repair, and Painting Program

Dear Mr. Nieves Miranda:

Thank you for your submission of the proposed revisions to Puerto Rico's *Solid Waste Regulations*, the proposed amendments to the *Regulation for the Control of Hazardous Solid Wastes*, and the *Application for Section 404(a) of the Toxic Substances Control Act Renovation, Repair, and Painting Program*. My staff have completed their review of the solid and hazardous waste regulatory revisions and enclosed, please find our comments for your consideration.

Regarding the proposed revisions to the *Solid Waste Regulations*, overall we found the revisions to be adequate to satisfy the federal consistency requirements pursuant to the Resource Conservation and Recovery Act (RCRA). However, there were some areas of concern which we highlighted in *Enclosure A*. Please modify the proposed revisions to address our attached comments and resubmit the final proposed revisions for EPA's review. Once the final corrections are made, we encourage you to put these revisions into effect as soon as possible and ensure that the municipalities and landfills/owners and operators are aware of, understand, and comply with these revisions.

Regarding the proposed amendments to the *Regulation for the Control of Hazardous Solid Wastes*, our review for consistency with federal regulations promulgated pursuant to RCRA revealed a number of areas of concern which are highlighted in *Enclosure B*. Please be advised that EPA's review was limited to the proposed amendments contained in your letter and did not constitute a full review of EQB's hazardous waste regulations. For clarity, our comments are formatted in the order in which the proposed amendments were submitted in EQB's May 18, 2010 letter.

Regarding EQB's October 15, 2010 *Application for Section 404(a) of the Toxic Substances Control Act Renovation, Repair, and Painting Program* authorization, currently, the application is under review by EPA Region 2 and EPA's Office of Chemical Substances and Pollution Prevention (OCSPP) in EPA Headquarters. Region 2 representatives recently met with your staff regarding additional information that is needed including the national program authorization checklist. Once the

information is received by EPA, we will complete our review and schedule a call with EQB to discuss any outstanding issues.

Thank you very much for your cooperation with these matters. If you have any question of concerns related to this letter, please contact Adolph Everett, RCRA Programs Branch Chief, at 212-637-4109.

Sincerely,

Judith A. Enck
Regional Administrator

Enclosures:

cc: Eli Diaz Atienza. Esq. (w/enc.)
Puerto Rico Solid Waste Management Authority

Puerto Rico Office of the Governor (w/enc.)

bcc: Lisa J. Plevin, COS (w/o encls.)
George Pavlou, DRA (w/o encls.)
Barbara Finazzo, DEPP-D (w/o encls.)
Joann Brennan-McKee, DEPP-DD (w/o encls.)
Dore LaPosta, DECA-D (w/o encls.)
William Sawyer, ORC (w/o encls.)
George Meyer, DECA, (w/o encls.)
Adolph Everett, DEPP-RPB (w/o encls.)
Claudia Gutierrez, ORA (w/o encls.)
Phil Flax, DECA (w/o encls.)
Carl Plossl, DECA (w/o encls.)
Robert Hazen, ORC (w/o encls.)

Enclosure A
EPA Comments on EQB Proposed Revisions to 1997 Solid Waste Regulations

Section and Comment:

541 A:

The table cross-referenced in the proposed revision needs correction, specifically 111- TCM and TCE are listed incorrectly and benzene is missing.

557:

Please confirm that there is an Appendix 1 in the 1997 regulations.

647:

The exemptions listed in the 1997 regulations are problematic. There were no such exemptions in the 1993 regulations. Please remove these exemptions to maintain consistency with the federal guidelines.

648:

The emergency provisions are not addressed.

Definitions:

Non-Hazardous Solid Waste Generating Activity

This definition is difficult to interpret and the examples cited may be subject to misinterpretation. It is unclear whether this definition is necessary to include in the regulation and we recommend removing this definition entirely unless its relevance can be clearly demonstrated.

Hazardous Solid Waste:

The definition as proposed is unclear and should be consistent with the federal definition. We recommend returning to the definition used in the 1993 regulations.

Agricultural Burning:

It appears that part of this definition may be inconsistent with 641A. Please ensure this definition is consistent with federal guidelines.

Fugitive Emissions:

Please ensure this is consistent with federal guidelines.

Injection Well:

Please ensure this is consistent with federal guidelines.

Scrap:

The 1993 EPA-approved regulations included a definition of the term "Junk Vehicle". This definition essentially included the definition of the term "Scrap" as defined in the 1997 revisions and these currently proposed revisions, and also the following additional component: "-Any tank, electrical appliance, beam or joist, metal container not in use and that is considered nonhazardous solid waste." Given that the term "Scrap" is broader in scope than the previously defined term "Junk Vehicle", we recommend that the definition of scrap also include the additional component from the 1993 regulations

cited above, or otherwise identify where the additional component from the 1993 definition of "Junk Vehicle" cited above is covered under the 1997 revisions or these currently proposed revisions.

Regarding the new provisions which were not included in the 1993 and added in the 1997 regulations:

A.

40 C.F.R. § 258.29(b) requires an owner/operator to notify a State Director when certain records required to be maintained are placed in a facility's operating record. § 504.2 of the 1993 regulations contained an appropriate provision to this effect. § 550.B. of the 1997 regulations only require that the facility "show" that the records are incorporated into its operating log when requested by EQB. To be consistent with Part 258, the 1997 regulations should add back in the requirement that the owner or operator "notify" EQB when records are incorporated into its operating log.

B.

The 1993 regulations contained an exception to the prohibition of open burning for debris from emergency cleanups; this was consistent with the exception contained in 40 C.F.R. § 258.24(b). The 1997 regulations however omitted the exception (although a provision for obtaining an emergency permit was included). The remedy is simply to add a new subsection, L. 3 to the 1997 reg denoted as § 531.L.

C.

§ 531.M of the 1997 regulations prohibits the disposal of untreated sewage sludge "into the land," although "solid waste facility" is elsewhere defined as being on the land. To rectify this, the provision in § 531.M should add after "land" the phrase: "solid waste facility".

Enclosure B
EPA Comments on EQB Proposed Amendments to the Regulation for the Control of Hazardous Solid Wastes

I. Standards for Universal Waste Management

EQB proposes to add Part XII (Rules 1202–1238) to the existing Rules in order to include the Standards for Universal Waste Management, promulgated under 40 C.F.R. Part 273. In general, it is EPA's opinion that such amendments are a positive step in terms of bringing consistency between EQB Rules and RCRA regulations. EPA's review, however, revealed that the following issues should be addressed:

1. In order to bring internal consistency and consistency with 40 C.F.R. Part 273, Subpart A–General, should precede Rules 1202–1208 (e.g., Subpart B precedes Rules 1209–1218, Subpart C precedes Rules 1219–1228, Subpart D precedes Rules 1229–1234, Subpart E precedes Rules 1235–1237, and Subpart F precedes Rule 1238);
2. Subpart G–Petitions to Include Other Wastes under 40 C.F.R. Part 273 was omitted in its entirety from the Proposed Amendments. It is EPA's opinion that Subpart G is an important regulation as it provides for public participation in the rule-making process;
3. The term “handler” was used and/or translated inconsistently. To be consistent, the term “manejador” should be used, rather than “generador” (e.g., Rules 1211(a), (b), (c), among others). Using the incorrect term is inconsistent with RCRA regulations;
4. The term “could cause” was used and/or translated inconsistently. In some instances, cause (“ocasionar”) or caused (“causar”) were used rather than could cause (“pueda causar”, “pudiera causar”, or “pudiera ocasionar”) (e.g., Rules 1211(a), (b)(1), (b)(4), (c)(1), 1221(b)(1), (c)(1), among others). Using the incorrect term is inconsistent with RCRA regulations;
5. The notification requirements regarding the receipt of illegal shipments, and storage limits, among others must also include EPA to avoid any confusion with the requirements to comply with the RCRA regulations (e.g., Rules 1216(g), 1220, 1226(g), 1236(c));
6. Internal references to other Rules and/or Parts were used inconsistently and/or not used. In some instances, only the name of the Rule was used, with no citation given, and, in others only the general Part was used. (e.g., compare Rule 1211(b)(3), (c)(2)(iii) and (iv), among others). It is EPA's opinion that EQB should strive for consistency in the use of internal references in the Rules to avoid confusion by both enforcement officers and the regulated community;
7. References to RCRA regulations were used inconsistently (e.g., compare Rule 1235 (a) and (b), among others). It is EPA's opinion that EQB should consistently cross-reference the RCRA regulations, to avoid confusion;

8. The applicability portion of certain Rules, i.e., to whom does the Rule apply, was left out in some instances (e.g., Rules 1204(a), among others);
9. When listed, some requirements did not include the words “and/or” prior to the last item in the list (e.g., compare Rule 1204 (a)(1) and (b), and (c)(1)). In addition, some requirements were not accurately listed and/or inadequately cross-referenced;
10. Rule 1204 seems to narrow and/or change the definition of a recall to situations in which the registrant and/or manufacturer of the pesticide voluntarily recalls it. Limiting the scope of such definition is inconsistent with RCRA regulations; and
11. Rule 1217 requires small quantity handlers of universal waste to keep records of shipments of universal waste for three years. In contrast, 40 C.F.R. § 273.19, does not include such requirement. EQB should provide an opinion regarding the effect of including this stricter standard.

II. The Manifest and In-Transit Storage Time—Transporters

EQB proposes to include various Manifest and In Transit Storage Time requirements for Transporters, contained in Part VII of the Rules, to bring consistency with RCRA regulations. EPA’s review, however, revealed that the following issues should be addressed:

1. Rule 703(D)(1) defines the Environmental Protection Agency as APA, rather than EPA, as defined in other Parts of the Rules. EPA’s recommends that the EQB consistently use EPA, rather than APA;
2. Rule 703(A) indicates that a hazardous waste generator must use the manifest. However, 40 C.F.R. § 262.20 is more specific in terms of the steps the generator must follow to prepare the manifest (e.g., OMB Control number 2050-0039 on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the appendix to this part). EPA also recommends the use of an Appendix under this section, detailing the procedures that must be followed, and/or including a cross-reference to 40 C.F.R. § 262.20;
3. Rule 703(D) does not accurately convey and/or omits certain requirements of 40 C.F.R. 261.21 §§ (d)–(m). EQB should review and update Rule 703(D);
4. The requirements 40 C.F.R. § 262.22 are not included in Par VII of the Proposed Amendments;
5. Rule 703(E) does not accurately convey and/or omits certain requirements of 40 C.F.R. 261.23. EQB should review and update Rule 703(E);
6. Rule 703(G) may not accurately convey and/or omits certain requirements of 40 C.F.R. 261.21. EQB should review and update Rule 703(G);

7. EQB should clarify how the Proposed Amendments affect and/or apply to Rule 703(c). Specifically, EQB should clarify how Rule 703(c)(1) and (2) are affected by the Proposed Amendments. EPA understands that EQB intended to include the Transfer Facility Requirements of 40 C.F.R. § 263.12 in the Rules. EPA is, however, concerned with the potential removal of the existing requirements. Doing so, would create new inconsistencies with RCRA regulations;
8. Rule 706(D) does not accurately convey and/or omits certain requirements of 40 C.F.R. 261.20 §§ (a)(1) and (1). EQB should review and update Rule 706(D);
9. EQB should clarify the structure of Rule 706(G), to ensure it conforms to 40 C.F.R. § 263.20(h) and/or the current Rule;
10. Rule 706(H) accurately conveys the requirements of 40 C.F.R. § 263.21; and
11. EQB should clarify in what Rule (e.g., 703 or 706) the Waste Minimization Certificate will be included, per 40 C.F.R. § 262.27.

III. The Toxicity Characteristic Leaching Procedure (TCLP) Rule

EQB proposes to update certain portions of Rule 604 regarding the Toxicity Characteristic Leaching Procedure (TCLP) Rule, to bring consistency with RCRA regulations. For the most part, the update adequately conforms to RCRA regulations. EPA's review, however, revealed that the following issues should be addressed:

1. Rule 604(D) (a) and (b) adequately conforms to 40 C.F.R. §§ 261.24(a), (b);
2. Table 1 of Rule 604 (D) The Maximum Concentration of Contaminants for the Toxicity Characteristic Table was updated to include all contaminants listed in Table 1 of 40 C.F.R. § 261.24; and
3. Rule 604(B)(1) accurately updates the methods used in 40 C.F.R. § 261.22(a)(1). Rule 604(B)(2), however, is not updated to use Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 does not update 40 C.F.R. § 261.22(a)(2). EQB should review and update Rule 604(b) and/or explain the bases for the decision not to update certain portions of the Rule, as explained above.

IV. Request for Information, General Prohibition, and Other Amendments

EQB proposes to add a Request for Information Rule and a General Prohibition, to bring consistency with RCRA regulations. For the most part, the update adequately conforms to RCRA regulations. EPA's review, however, revealed that the following issues should be addressed:

1. Rule 219 includes most of the information request authority contained in RCRA Section 3007, 42 U.S.C.A. § 6927. You may consider including additional information request and/or inspection authority contained in the aforementioned Section.
2. Rule 306 includes most of the Preparedness and Prevention prohibitions contained in 40 C.F.R. Part 265 and RCRA Section 7003, 42 U.S.C.A. § 6973. You may consider including additional prohibitions in the aforementioned Section.
3. Rule I-813(F)(2) accurately updates the Flammable and Combustible Liquids–1977 or 1981 method, per 40 C.F.R. § 263.265.198.
4. Rule I-902(E)(3) seems to contain a double-negative and/or does not comply the requirement accurately. Please update the Rule.

V. Updates to P.R. Environmental Public Policy Act of 2004

The Proposed Amendments EQB submitted, adequately update the references to the P.R. Environmental Public Policy Act of 2004 (PR–EPPA) (e.g., Rules 205, 211, 219, I-805(A)(3)(a)(ii), I-806(F)(3)(i), I-813(F)(3)–(4)(d), I-908(F)(1), I-909(D)(2), and I-912(B)(c)–(K)(1)). EQB should evaluate and develop an opinion on the effect of the PR–EPPA on portions of Amethe local rules.

VI. Other Comments

In addition to the above responses to the specific issues raised by EQB in the May 18 letter, EPA recommends that EQB evaluate the following aspects related to the proposed amendments:

1. EQB should evaluate how it expects to manage the Rule-update process to consider future amendments for consistency with amendments to federal regulations
2. EQB should provide an opinion on how Closure and Post-closure RCRA financial requirements are working. Specifically, EQB should describe its role in enforcing such requirements and the proposed improvements to the relevant Rules.

